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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,214	09/09/2003	John Dykstra	57983.000152	9151
7590 Thomas E. Anderson Hunton & Williams LLP 1900 K Street, N.W. Washington, DC 20006-1109			EXAMINER SINKANTARAKORN, PAWARIS	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 10/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,214

Applicant(s)

DYKSTRA, JOHN

Examiner

Pao Sinkantarakorn

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 8-20 is/are rejected.
- 7) ☒ Claim(s) 3-6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1 and 8-11 have been considered but are moot in view of the new ground(s) of rejection.
2. Claims 1-6, and 8-20 are currently pending in the application. Claim 7 is canceled. Claims 12-20 are newly added.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 8 is rejected under 35 U.S.C. 101 because it is directed towards non-statutory subject matter.

Claim 8 recites "one processor readable carrier for storing a computer program of instructions configured to be readable by at least one processor for instructing the at least one processor to execute a computer process" is not a computer readable medium and is not encoded with computer executable instructions; therefore, it is not functional.

NOTE: To overcome this rejection, it is suggest to the applicant to rewrite the claim in terms of "A computer readable medium, encoded with computer executable instructions."

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another, filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, and 8-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Dworkin et al. (US 2003/0058893).

Regarding claims 1, 8, and 9, Dworkin et al. disclose a method for synchronizing redundant network elements, the method comprising:

transmitting a checkpoint indication signal to a primary element and at least one backup, wherein each of the primary element and the at least one backup element has one or more connections to a network (see paragraph 77, each CMTS receives a calibration pulse from calibration pulse generator simultaneously);

generating a first checkpoint that is indicative of a first status of the primary element associated with a first arrival time of the checkpoint indication signal at the primary element (see paragraphs 77-78);

generating a second checkpoint that is indicative of a second status of the at least one backup element associated with a second arrival time of the checkpoint indication signal at the at least one backup element (see paragraphs 77-78);

and comparing the first checkpoint and the second checkpoint to determine a synchronization between the primary element and the backup element (see paragraphs 67 and 78);

regarding claim 2, the checkpoint indication signal is transmitted from the primary element, the at least one backup element or a source outside the network (see Figure 1 reference numeral 103);

regarding claims 12 and 13, the checkpoint indication signal is positioned similarly relative to other signals arriving for processing at the primary element and the at least one backup element (see paragraphs 77-78);

regarding claims 16 and 17, the step of generating a first checkpoint comprises generating a plurality of first checkpoints that are indicative of a first status of a respective plurality of sessions on the primary element associated with a first arrival time of the checkpoint indication signal at the primary element (see paragraph 78), the step of generating a second checkpoint comprises generating a plurality of second checkpoints that are indicative of a second status of a respective plurality of sessions on the at least one backup element associated with a second arrival time of the checkpoint indication signal at the at least one backup element (see paragraph 78), and the step of comparing comprises comparing the plurality of first checkpoints and the plurality of second checkpoints to determine a synchronization between the primary element and the backup element (see paragraphs 67 and 78);

regarding claim 20, further comprising generating the checkpoint indication signal periodically (see paragraph 39).

Regarding claims 10 and 11, Dworkin et al. disclose a method for synchronizing redundant network elements, the method comprising:

receiving at a backup element a checkpoint indication signal (see paragraphs 77-78);

generating a first checkpoint that is indicative of a status of the backup element associated with an arrival time of the checkpoint indication signal at the backup element (see paragraphs 77-78);

receiving a second checkpoint from a primary element that is indicative of a status of the primary element associated with an arrival time of the checkpoint indication signal (see paragraphs 77-78); and

comparing the first checkpoint and the second checkpoint to determine a synchronization between the primary element and the backup element (see paragraphs 67 and 78);

wherein the checkpoint indication signal is transmitted simultaneously to the primary element and the backup element (see paragraph 77, each CMTS receives a calibration pulse from calibration pulse generator simultaneously);

regarding claims 14 and 15, the checkpoint indication signal is positioned similarly relative to other signals arriving for processing at the primary element and the at least one backup element (see paragraphs 77-78);

regarding claims 18 and 19, the step of generating a first checkpoint comprises generating a plurality of first checkpoints that are indicative of a status of a respective

plurality of sessions on the backup element associated with an arrival time of the checkpoint indication signal at the backup element.

Allowable Subject Matter

6. Claims 3-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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8. Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

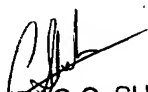
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pao Sinkantarakorn whose telephone number is 571-270-1424. The examiner can normally be reached on Monday-Thursday 9:00am-3:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PS


CHIBAG G. SHAH
PRIMARY PATENT EXAMINER